

ORDER

Penalty Docket No. DE 84-168 for \$500 is affirmed.

DONE this 1st day of November, 1984.

POLLUTION CONTROL HEARINGS BOARD

Gayle Rothrock
GAYLE ROTHROCK, Chairman

Wick Duford
WICK DUFORD, Lawyer Member

Lawrence J. Faulk 10/3/84
LAWRENCE J. FAULK, Vice Chairman

1 Class AA limit for turbidity. A water quality standard violation
2 occurred at the subject site on January 24, 1984, due to silt and mud
3 influence in the water. WAC 173-201-025(13), 173-201-045(1)(b) and
4 WAC 173-201-070(2).

5 IV

6 RCW 90.48.144 provides a penalty of up to \$5,000 per day for
7 unlawful discharges to waters of the state. The respondent agency
8 issued several warnings and made efforts to secure voluntary
9 compliance with the law on Canyon Ridge Estates before issuing a \$500
10 penalty for the subject runoff event. Inadequate preventive measures
11 were taken, such that protection from a water pollution event during
12 the rainy season was not achieved on the subject site. The penalty is
13 a reasonable exercise of discretionary enforcement power.

14 V

15 Any Finding of Fact which is deemed a Conclusion of Law is hereby
16 adopted as such.

17 From these Conclusions the Board enters this
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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1 clean water statutes and regulations of this state.

2 VI

3 A penalty docket was recommended by the DOE inspector and the
4 department issued Docket No. 84-168 imposing a \$500 penalty on
5 February 17, 1984. From this appellant company applied for relief,
6 was denied it, and ultimately appealed to the Board on May 30, 1984.

7 VII

8 Any Conclusions of Law which should be deemed a Finding of Fact is
9 hereby adopted as such.

10 From these Findings of Fact, the Board comes to these

11 CONCLUSIONS OF LAW

12 I

13 The Board has jurisdiction over these persons and these matters.
14 RCW 43.21B.

15 II

16 The Board takes judicial notice of the Clean Water Act at RCW
17 90.48 and of Washington Administrative Code 173-201-025(13),
18 173-201-045(1)(b), and 173-201-070(2); pertinent statutes and
19 regulations governing this matter.

20 III

21 The nephelometric turbidity unit (NTU) rating of 360 at a ditch
22 emptying into a tributary of North Creek, a reading of 190 NTU
23 turbidity on another tributary, and a 55 NTU turbidity measurement at
24 a spot below the confluence of an unaffected tributary are all
25 attributable to runoff from Canyon Ridge Estates and all exceed the

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1 devices, such as haybales, rock dams, and filter fences, on site. No
2 evidence was presented showing the proper use of protective measures
3 at Division II.

4 IV

5 On January 24, 1984, a Tuesday, the Department of Ecology's
6 attention was drawn to silt and mud runoff from Division II into a
7 tributary of North Creek which was increasing the turbidity of its
8 waters. Upon examination of the site and the waters, an inspector for
9 the DOE determined there was siltation from unsecured banks,
10 unvegetated soils, and muck running into roadside ditches and thence
11 into a tributary to North Creek. Photographic evidence supports that
12 finding.

13 There was no evidence of use of filter fabric, or soil-stabilizing
14 vegetation, or properly-placed haybales. Silted water was running
15 around a settling basin, not in and through it. One haybale lay in
16 the street. A nearby fishpond was full of muddy water.

17 Being concerned about possible turbidity levels which would be
18 harmful to aquatic life, the inspector took samples and observed
19 turbidity measurements on the tributaries, which exceeded those
20 permissible for class AA waters.

21 V

22 The inspector had been to the Canyon Ridge Estates construction
23 project on several previous occasions because of water pollution
24 complaints. He had warned the owners and contractors of pollution
25 problems and made attempts to secure voluntary compliance with the

26 FINAL FINDINGS OF FACT,
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1 Witnesses were sworn and testified. Evidence was admitted and
2 reviewed. Oral argument was heard. From the testimony, evidence, and
3 contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 Appellant company was under contract with Standard Pacific
7 Northwest, Inc., for consulting engineering and project supervision
8 services on the development of Canyon Ridge Estates (Divisions I and
9 II) in the vicinity of North Creek, near Bothell, in 1983 and 1984.

10 In the wet weather months of 1983, various silt and mud runoff
11 events occurred in Division I where a construction contractor was not
12 attentive to preventive measures for wet construction conditions. The
13 creek system was affected. Appellant did not select that same company
14 to effect the construction of Division II.

15 II

16 North Creek is known as a critical stream for anadramous fish:
17 its surface water classification is AA (extraordinary waters).

18 Tributaries to the creek drain areas of Canyon Ridge Estates and
19 are assigned the same AA classification.

20 III

21 Goldsmith and Associates, Inc., prepared construction site
22 management drawings for Division II which their corporate secretary
23 believed to show environmental protective devices suitable enough to
24 function in wet weather conditions. He was not the project engineer
25 and did not have occasion to check the actual existence of any such

26 FINAL FINDINGS OF FACT,
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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
HUGH G. GOLDSMITH AND
ASSOCIATES, INC.,

Appellant,

V.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCRB No. 84-110

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a water pollution control \$500 penalty docket for allowing the discharge of silt and mud into a tributary to North Creek, came on for hearing before the Pollution Control Hearings Board; Lawrence J. Faulk, Wick Dufford, and Gayle Rothrock (presiding), on October 3, 1984, at Lacey, Washington. The proceedings were officially reported by Marcia Erwin of Olympia.

Appellant company was represented by Gordon Goldsmith, its Corporate Secretary. Respondent agency was represented by Assistant Attorney General, Charles W. Lean.